



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-1/51051

PRELIMINARY RECITALS

Pursuant to a petition filed November 1, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Adams County Dept. of Health and Social Services in regard to Medical Assistance (MA), a hearing was held on December 27, 2001, at Friendship, Wisconsin. A hearing previously set for November 19, 2001 was rescheduled at petitioner's request.

The issue for determination is whether petitioner's wife is eligible for an increase in the income allocation from petitioner under provisions of the MA spousal impoverishment program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Respondent:

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Patricia Zant, ESS
Adams County Dept Of Social Services
108 E North Street
Friendship, WI 53934-0500

ADMINISTRATIVE LAW JUDGE:

Kenneth P Adler

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Juneau County who resides in an institution. His wife continues to reside in the community in Juneau County.
2. Petitioner previously resided at a skilled nursing facility in Adams County.

3. On October 31, 2001 petitioner's spouse completed an application for spousal impoverishment MA at the Adams County agency.
4. The agency processed petitioner's application and concluded petitioner was eligible for spousal impoverishment MA as the couple's assets were well below the established asset limit.
5. Petitioner has the following monthly income: (1) Social Security - \$891; (2) Nipsco pension - \$1,331. Petitioner's spouse has monthly Social Security income of \$624.
6. Petitioner's spouse is eligible for a Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$2,175. Petitioner's nursing home liability was calculated at \$624 with an allocation of \$1,551 to his community spouse to raise her monthly income to \$2,175.
7. Petitioner's MA eligibility was never confirmed so MA eligibility did not begin. There is no open MA case for petitioner in either Adams or Juneau County.
8. Petitioner's community spouse presents the following monthly expenses:

G.M. card	\$200 (balance \$1,065)
Discover card	\$200 (balance \$8,000)
Citibank card	\$200 (balance \$9,125)
Mile Bluff Medical	\$200 (balance \$2,000)
Sears	\$ 50 (balance \$1,005)
Bank loan	\$100 (balance \$600)
Gas & electric	\$197
Pharmacy	\$200
Food & household expenses	\$300
Health Insurance	\$111
Real Estate taxes	\$400 (\$1,600 in arrears)
Telephone	\$100
Car insurance	\$ 28
House insurance	\$ 20
Lawn care/snow removal	\$ 40
Total	\$2,346

DISCUSSION

The Minimum Monthly Maintenance Needs Allowance (MMMNA) is the established amount the MA program allows a community spouse based upon what has been determined necessary to allow that spouse to continue residing in the community. Currently the MMMNA is the *lesser* of \$2,175 per month, or \$1,875 plus the amount of shelter expenses incurred each month by the community spouse which exceed \$562.50, known as the "excess shelter allowance". Wis. Stat. §49.455(4)(b), MA Handbook, App. 23.0.0(05-01-00). The MMMNA is a general number considered to be the amount of monthly income the spouse of an individualized individual requires to continue residing in the community and meeting his or her *basic* maintenance needs.

The Community Spouse Income Allocation (CSIA) is the amount which a community spouse is determined to need to continue residing in the community and may actually exceed the MMMNA. The CSIA is defined as the greater of the MMMNA or an amount determined by a fair hearing. Wis. Stat. §49.455(4)(b).

Administrative law judges have the authority to increase the CSIA above the MMMNA where the MMMNA is insufficient to meet a particular community spouse's *basic* maintenance needs. Wis. Stat. §49.455(8)(c); Wis. Admin. Code §HFS 103.075(8)(c); MA Handbook, Appendix 23.6.0.A. However, an increase in the CSIA above the MMMNA can be made through the fair hearing process only if it is

established that the community spouse requires income above the level provided by the MMMNA due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. Wis. Stat. §49.455(8)(c); Wis. Admin. Code §HFS 103.075(8)(c).

A review of the information referenced in Finding of Fact #8 reveals the listed expenses to all be reasonable. Petitioner's spouse testified that the balances on the credit cards were all incurred prior to her husband's institutionalization. Verification of utilities, food, medical, personal care, vitamins/OTC drugs and miscellaneous expenses was also presented. In addition, I find the car and house insurance expenses to be reasonable. The community spouse did not present any estimate of possible home expenses as she explained the home was in fairly good shape and she might only require assistance with lawn care and snow removal.

When adding up all the information provided by the community spouse, her monthly expenses of \$2,346 as presented only exceeds the MMMNA of \$2,175 by \$171. Therefore, she would only be eligible for that additional amount of allocation of her husband's income. This would reduce his cost of care payments to \$453.

However, the community spouse has approximately \$21,800 in debt which she explained was incurred prior to her husband's institutionalization. The monthly payments she has requested will not reduce that debt considerably considering the interest rates charged on the consumer credit cards. Therefore, I will order the remaining \$453 of petitioner's income be allocated to the community spouse to pay down the credit card debt for a period of one year. This should allow her to consolidate and significantly reduce the debt during that time. The budget should then be reviewed in February 2003 to determine the community spouse's updated financial situation. If she continues to have financial needs above the MMMNA she may file another fair hearing at that time.

I note the county agency explained at hearing this particular case "never opened" for MA. Apparently when the community spouse filed the fair hearing request for an additional income allocation from her husband the worker believed she should put the case "on hold" until the matter was resolved. Unfortunately, the worker who completed the application processing was not present at the hearing and a review of the CARES system concluded no case had, in fact, been opened. Yet there is no dispute petitioner was MA eligible as the couple's assets were well below the asset level for MA eligibility and the county agency has been able to present no basis for denying eligibility.

Based upon all of the above I will order petitioner's nursing home eligibility granted effective October 2001. All income of petitioner will be ordered allocated to the community spouse based upon her large consumer debt for a period of 12 months from the month of this decision.

CONCLUSIONS OF LAW

1. That petitioner is eligible for nursing home MA effective October 2001.
2. That petitioner's community spouse has financial circumstances which require a CSIA above the MMMNA of \$1,875.
3. That all petitioner's monthly income must be allocated to his community spouse for a period of one year to increase the CSIA to \$2,799.

NOW, THEREFORE, it is

ORDERED

That the matter be remanded to the county agency with the following instructions: (1) certify petitioner MA eligible with an application date of October 31, 2001; and (2) increase the Community Spouse Income Allocation to \$2,799. This will reduce petitioner's cost of care contribution to \$0. This action is to be taken within ten (10) days of the date of this decision.

This decision will be in affect for the period of one year to allow the community spouse to continue consolidating and reducing her consumer debt. At the end of February 2003 this order will expire and the county agency will be obligated to utilize the MMMNA in existence at that time. The community spouse may file an appeal at that time if she continues to require a CSIA above the MMMNA.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, , as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2002.

Kenneth P Adler
Administrative Law Judge
Division of Hearings and Appeals
315/KPA